SINGLE BENCH

(3)

**IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)**

**WRIT PETITION No. ..... 5037 ..... / 2005**

PETITIONER : **Smt. Kamla Singh Age - 45** Year
W/o. Shri Thakur Manohar Singh
R/o. Near Head Post Office, Tilak Nagar ,Bilaspur (C.G.)

**VERSUS**

RESPONDENTS :(1) **Smt. Dulorin Bai. Age- 37 Years**
Wd/o. Late Shyam Singh Gond

(2) **Minor Suraj Singh Gond** Age11Year
S/o. Late Shyam Singh Gond
Represanted Though natural guardian mother Smt. Dulorin Bai

(3) **Mukhiram Gond** Age - 60 Years
S/o. Late Ratiaram

(4) **Smt. Mongara Bai** Age-57 Years
W/o. Mukhiram Gond ,
All Resident of Village - Rahangi, P.S. Hirri, Tahsil- Bilha, Distt. Bilaspur (C.G.)

(5) **The New India Assurance Co. Ltd.**
Through Branch Manager, Branch Office Rajendra Nagar Chowk, Bilapur C.G.

5(02)05

**WRIT PETITION UNDER ARTICLE 227 OF THE CONSITITUTION OF INDIA**

XI-HC-22

(दो)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 5037/05 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**12-1-2006**

Shri Sachin Singh Rajput and Shri Anant Bajpai, counsel for the petitioner.

Shri Gautam Khetrapal, counsel for respondents no.1 to 4.

Shri N.K. Agrawal, Sr. Advocate, with Shri Deepak Gupta, counsel for respondent no.5.

Heard.

By this petition under Article 227 of the Constitution of India the petitioner has challenged the order whereby no fault liability by way of interim award has been passed in favour of the claimants/respondents no.1 to 4.

Notices were issued to the respondents/claimants. They put appearance through counsel and an objection has been raised regarding the maintainability of the writ petition on the ground that against the interim award the appeal is provided under Section 173 of the Motor Vehicles Act. Reliance is placed upon the Larger Bench judgment of the High Court of M.P. in the case of ***Oriental Insurance Company Limited vs. Chintaman and others*** reported in ***1995 JLJ 4***. It is contended that an appeal under Section 173 of the Motor Vehicles Act lies against the order of interim compensation. It is also contended that the determination of right or liability under Section 140 of the Motor Vehicle Act amounts to an award as contemplated in Section 168 of the Act.

The aforesaid judgment of the Larger Bench of the High Court of Madhya Pradesh is pertinent. In para 11 of the said judgment, it has been held as under:

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित -2- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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*"11. ..... If the determination of the compensation payable under Section 140 of the Act is not to be regarded as an award, certain beneficial aspects of Sections 168 and 173 would be denied to the claimants who may be dragged to the superior Courts by challenges against such determination. The benefit of Section 168(2) requiring the Tribunal to deliver copies of the award to the parties expeditiously, of sub-section (3) of Section 168 requiring the person liable to deposit the amount awarded by the Tribunal within 30 days, and of the requirement in the proviso to sub-section (1) of Section 173 to deposit Rs.25,000/- or fifty percent of the award, whichever is less, in the High Court as precondition for entertainment of the appeal, will not be available to the claimants. It is not possible to accept that the legislature which introduces no fault liability in the 1939 Act and the 1988 Act intended to deprive such claimants of the beneficial provisions referred to above. If the party against whom a claim is made for compensation under superior Court either by way of revision or under Article 226 of the Constitution of India, the claimants will not secure the benefit that he would have otherwise secured under Section 173(1) of the Act. It is not possible to accept that such was the legislative intention."*

Para 14 of the aforesaid judgment also specifically states that the revision and the writ petition do not apply, which reads as under:

*"14. There cannot be any doubt that where an appeal lies revision cannot lie. This principle has been introduced in Section 115 of the Code of Civil Procedure by means of sub-section (2) incorporated by Amendment Act No.110 of 1976. Sub-section (2) states that the High Court shall not under this section vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto. Since we have held that an*

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 5037/05 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित — 3 — | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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*appeal lies, it follows that a revision does not lie. Since the appeal lies, it will also follow that the impugned award is not liable to be challenged under Article 227 of the Constitution of India."*

Having considered the facts and circumstances of the case and material on record and in view of the aforesaid judgment of the High Court of Madhya Pradesh and further in view of the settled law that the order of interim award is not liable to be challenged under Article 227 of the Constitution of India, the instant writ petition is not maintainable.

Accordingly, the writ petition is dismissed as not maintainable.

At this stage, learned counsel for the petitioner prays that the petitioner may be allowed to prefer an appeal under Section 173 of the Motor Vehicles Act.

The prayer is not opposed.

The petitioner may prefer an appeal under Section 173 of the Motor Vehicles Act, if so desire. The certified copy of the impugned order as well as the original documents filed alongwith the writ petition may be returned to the petitioner so as to enable her to prefer an appeal, after retaining photocopies of the documents.

Consequently, M.W.P. No.4068/2005 also stands disposed of.

Sd/-
Fakhruddin
Judge

H/-

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